IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 819 OF 2006

MAJEED MAMAMUD PEVEKAR ..APPELLANT

V/S

SMT. JULEKHA ABBAS GOTHEKAR

& ORS. ..RESPONDENTS

MISS NAYANA THATTE FOR APPELLANT.

NONE FOR RESPONDENTS.

CORAM: V.M. KANADE, J.

DATE : 14TH SEPTEMBER,2007.

P.C.

1. Heard learned counsel for the Appellant. None appears for the Respondents though they were served. Appellant is the original plaintiff who had filed the suit for declaration that he was the owner of the suit property and for consequential order of injunction restraining the defendants from obstructing the peaceful possession of the suit property. It is the plaintiff's case that his father transferred the suit property in his name and his name was entered in the Records of Rights on 9-1-1984 and mutation entry was made accordingly. However in the year 1991 the plaintiff's father made mutation entry in favour of the

defendant. However the mutation entry made in favour of the plaintiff was cancelled. The trial court dismissed the suit of the plaintiff and the Appellate court confirmed the order passed by the trial court. Against that order the 2nd Appeal is filed. It is submitted that the property was transferred in the name of the plaintiff in 1994 which fact was reflected in the mutation entry. It is submitted that under Muslim Law the property could be orally gifted by the owner and in this case father of the plaintiff had transferred the property in his name by oral gift which can be seen from the mutation entry which was made. As a result the subsequent sale of the property by the father was illegal since she was no longer the owner of the property and it is submitted that this court cannot accept the concurrent finding of fact recorded by both the courts. The theory of the gift of the father to the plaintiff herein has not been proved by adducing evidence. This being the finding of fact, this court cannot interfere with the concurrent finding by exercising its jurisdiction under section 100 of Civil Procedure Code. No substantial question of law is raised in the Appeal. Hence the Appeal is dismissed.

(V.M. KANADE, J.)